IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 15TH DECEMBER 2006 / 24TH AGRAHAYANA 1928

CRL.A.No. 629 of 2006(C)

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SC.563/2002 of I ADDL. SESSIONS COURT, KOLLAM
CP.115/2000 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOLLAM

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APPELLANT/ACCUSED:

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MANIAN, S/O.KUTTAN,
C.NO. 8193, CENTRAL PRISON,
TRIVANDRUM.

BY ADV. ADV.NIDHI BALACHANDRAN (STATE BRIEF)

RESPONDENT/COMPLAINANT:

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THE STATE OF KERALA THROUGH
A PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI. PUZHEKKARA MUHAMMED.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 15/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.THANKAPPAN, J.**

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**CRL. APPEAL NO. 629 OF 2006**

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Dated this the 15th day of December, 2006

**JUDGMENT**

The appellant is the accused in Sessions Case No.563 of 2002 on the file of the Ist Additional Sessions Court, Kollam. He faced trial for the offence punishable under Section 302 I.P.C.

2. The prosecution case against the appellant was that on 22.8.1999 at about 10.45 A.M. at the road to the private bus stand, he inflicted two stab injuries on the chest of one Rajendran with an iron rod as a result of which Rajendran died. To prove the case against the appellant, the prosecution examined PWs.1 to 6 and produced Exts.P1 to P8(a) and MOs.1 to 3. No oral or documentary evidence was adduced on the side of the defence. On closing the prosecution evidence the appellant was questioned under Section 313 Cr.P.C. The appellant denied the allegations levelled against him. According to the appellant, he asked deceased Rajendran for his cycle who refused to give him the cycle and also accused him of having caused a puncture of the tyre of his cycle,. This resulted in a scuffle between the appellant and the deceased Rajendran in

the course of which deceased Rajendran fell down and sustained the injuries. The appellant further stated that since the injuries were minor, no body paid much attention to the same. However, on accepting the evidence adduced by the prosecution, the trial court found the appellant guilty under Section 304 Part I I.P.C., convicted him thereunder and sentenced him to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.50,000/- and in default of payment of fine, to undergo simple imprisonment for a period of two years. The above conviction and sentence are challenged in this appeal.

3. This appeal is filed through the jail authorities. Since the appellant is not defended by a counsel of his choice, a State Brief has been appointed to defend his case. This Court heard the learned counsel appearing for the appellant as well as the learned Public Prosecutor.

4. Learned counsel appearing for the appellant submits that the trial court committed serious error in placing reliance on the prosecution evidence to find the appellant guilty of the offence alleged against him. Learned counsel submits that even if the entire evidence adduced by the prosecution is accepted, the appellant ought not to have been convicted under Section 304 Part I I.P.C. in the light of the nature of the injuries

alleged to have been inflicted by him.

5. PW.1, the nephew of deceased Rajendran gave the First Information Statement to the Sub Inspector of Police who registered a crime against the appellant. PW.1 was not an eye witness to the occurrence. PWs.2 and 3 were examined to prove the occurrence. PW.2 deposed that he was an eye witness to the occurrence. He was a student at the relevant time and he stated that on the date of occurrence, he was sitting in the scrap shop of his father to help him in the business. PW.2 further stated that the deceased Rajendran was an employee of the shop and that he had accompanied deceased Rajendran out of the shop while the victim went to have tea and he saw the appellant sitting on a trolley near the road and when deceased Rajendran reached near the trolley, the appellant stabbed him twice on the chest and then ran away. PW.2 also stated that after sustaining the injuries, the deceased Rajendran came back to the shop. PW.3, a nearby shop owner stated that he saw the appellant running towards south and the deceased Rajendran running to the shop of PW.2. He further deposed that on coming to know through PW.2 that the appellant had stabbed deceased Rajendran, he ran after the appellant, but he was not able to catch him. This witness did not support the prosecution case and he was declared hostile. PW.4 was the doctor who conducted

postmortem and issued Ext.P3 postmortem certificate. He stated that he noted the following injuries on the body of the deceased:

> "1. Incised penetrating wound 0.9 x 0.3 cm. obliquely placed on the left side of front of chest the upper inner sharply cut end being 10 cm. outer to midline and 11 cm. below the upper end of sternum. Other end was blunt. The wound was surrounded with an abrasion 0.2 to 0.5 cm. The wound entered into the chest cavity through the 5th intercostal space and was transfix the upper lobe of left lung, front of pericadium and the trunk of pulmonary artery. The wound was directly downwards, backwards and to the right for a total minimum depth of 5.5. cm. The pericardial cavity contained 150 ml. of fluid blood. The left chest cavity contained 1400 ml. of fluid blood. The left lung was found partially collapsed.
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> 2. Incised penetrating wound 1.2 x 0.5 cm. obliquely placed on the left side of chest the upper blunt end being 14 cm. outer to midline and 18 cm. below the upper end of sternum. The other end was found sharply cut. The wound was surrounded with an abrasion 0.2 to 0.5 cm. The wound entered into the chest cavity and terminated after making a nick in the diaphragm for a total minimum depth of 6.5 cm.
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> 3. Abrasion 0.5 x 0.5 cm. just below the injury No.2."

PW.4 further stated that death was due to injury Nos.1 and 2 sustained in the chest. This witness also stated that the injuries could be caused with a

weapon like MO.1 and also by falling on to a weed weapon with two sharp ends. According to PW.4, injury Nos. 1 and 2 were sufficient in the ordinary course of nature to cause death. PW.5 prepared Ext.P4 plan and PW.6 conducted the investigation and prepared Ext.P6 inquest report and Ext.P7 scene mahazar.

6. The court below considered the evidence of PWs.2, 3 and 4 and found that the deceased Rajendran died due to injury Nos. 1 and 2. This Court also considered the evidence of these witnesses and this Court is of the view that the court below was fully justified in accepting the evidence of PWs.2 and 3. Hence, the finding entered by the court below requires no interference.

7. The question to be considered is whether the court below was justified in convicting the appellant under Section 304 Part I I.P.C. To decide this question, the evidence of PW.4 has to be analysed carefully and also the circumstances under which the injuries were inflicted by the appellant. The trial court had found from the evidence adduced by the prosecution that the appellant had no intention to cause the death of the deceased Rajendran. The court below also found from the evidence of PW.4 that injury Nos. 1 and 2 were sufficient in the ordinary course of

nature to cause death. These injuries were on the vital part of the body of the deceased. From the nature of the injuries and the weapon alleged to have been used, it cannot be concluded that the appellant had full knowledge that the injuries inflicted were likely to cause death. It is also to be remembered that PWs. 2 and 3 had no case that the appellant was holding MO.1 weapon in his hand when the deceased reached the place where the appellant was sitting. There is also no evidence to show from where the appellant had taken the weapon. The exact point of time of inflicting the injuries is also not spoken to by PW.2 Further, PW.4 had stated that the injuries could be caused by falling on to a weed weapon with two sharp ends. Hence, it is only proper to hold that the appellant had neither the intention to cause the death of deceased Rajendran nor the knowledge that the injuries inflicted by him were likely to cause death. Hence, the finding of the court below that the act committed by the appellant would come under Section 304 Part I I.P.C. is not correct. If the evidence of PW.2 is accepted, it can be seen that the appellant and the deceased Rajendran had a scuffle and the appellant might have inflicted the injuries in the midst of heat and passion. If that be so, the injuries were inflicted without pre-meditation, but the injuries caused death. Hence, the appellant has to be convicted under Section 304 Part II I.P.C.

8. In the above circumstances, the conviction entered by the court below under Section 304 Part I I.P.C. and the sentence awarded are set aside. The appellant is convicted under Section 304 Part II I.P.C. and sentenced to undergo rigorous imprisonment for a period of three years.

Accordingly, the Crl. Appeal is allowed in part.

**(K.THANKAPPAN, JUDGE)**

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K.THANKAPPAN, J.

CRL. APPEAL NO.629/2006

JUDGMENT

15TH DECEMBER, 2006.